UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00218

Clifton Hennington,
Plaintiff,

v.

Director, TDCJ-CID,
Defendant.

ORDER

Plaintiff Clifton Hennington, proceeding pro se and *in forma pauperis*, filed a petition alleging violations of his constitutional rights in prison on a form approved for habeas corpus petitions under 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636(b). Doc. 3.

On August 21, 2021, the magistrate judge issued a report recommending that plaintiff's case be dismissed without prejudice due to his failure to comply with an order to submit his claims in cognizable form in a civil-rights complaint under 42 U.S.C. § 1983. Doc. 16. Plaintiff filed a timely, written objection. Doc. 18.

The court reviews the objected-to portions of a magistrate judge's report and recommendation de novo. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The magistrate judge recommended dismissal because plaintiff had presented his claims in a form in which they were not cognizable and failed to comply with the order to correct that flaw. Doc. 16. Plaintiff's objection asserts in passing that he is innocent of the crime for which he is imprisoned but makes clear that the basis for the claim raised in this action is exposure to Covid-19 in prison. Doc. 18. The magistrate judge correctly observed that such a claim does not fall under the jurisdiction of § 2254 (Doc. 6 at 1-2) and that plaintiff has refused to comply with the order to present it in proper form. Doc. 16.

- 2 -

Having reviewed the magistrate judge's report de novo, and being satisfied that it contains no error, the court overrules plaintiff's objections and accepts the report's findings and recommendation. Plaintiff's case is dismissed without prejudice due to his failure to comply with the orders of the court and to take the steps necessary to prosecute his claim.

So ordered by the court on September 21, 2021.

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J. CAMPBELL BARKER
United States District Judge